UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

ALL SEASONS CLIMATE CONTROL, INC.	
Employer	
and	**Case No. 8-RC-16733**
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL #33, AFL-CIO	
Petitioner	

REPORT ON OBJECTIONS

Pursuant to a Petition filed on June10, 2005, and a Stipulated Election Agreement approved by me on June 29, 2005, an election was conducted on July 15, 2005, among the employees in the following described unit:

> **All full-time and regular part-time employees who perform plumbing, pipefitting, electrical, insulating, carpentry, boiler making, laboring, and sheet metal work, truck driver/utilitymen, and parts coordinators/utilitymen, that are employed by the Employer at its 19 E. Main Street, Norwalk, Ohio 44857, but excluding all salespersons, office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.**

The payroll period for eligibility was that ending Saturday, June 18, 2005**.** The Tally of Ballots issued after the election shows that of approximately fourteen (14) eligible voters, fourteen (14) cast ballots, of which eight (8) were cast for and three (3) against the Petitioner. There were three (3) challenged ballots, a number insufficient to affect the results of the election.

On July 22, 2005, the Employer filed timely Objections to Conduct Affecting the Results of the Election, duly serving a copy thereof on the Petitioner. A copy of the employer's Objections is attached hereto and incorporated herein.

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, an administrative investigation of the objections was conducted and I hereby make the following findings, conclusions, and recommendations.

PREFATORY NOTE

I have concluded that Employer's Objections discussed below lack merit. The remaining Objections present issues of fact or law which cannot be resolved ex parte. Accordingly, by separate document, I am issuing an Order Directing Hearing on Objections with respect Objection Nos. 3, 4, 5 and 6.[1]

THE OBJECTIONS

Objection No. 1 and 2:

Since the allegations in these Objections are similar, I shall treat them as a single Objection.

In Objection No. 1, the Employer alleges that, shortly before the election, the Petitioner and/or its agents told employees that the Employer was going bankrupt and was planning on starting up again as a new company. In Objection No. 2 the Employer alleges that, shortly before the election, the Petitioner told employees that it was illegal to receive less benefits if they were to become unionized.

The Employer did not submit any evidence to support Objection No. 1. In support of Objection No. 2, the Employer presented an affidavit from Project Manager Robert Earl.

Earl testified that the Employer continued its practice of conducting regularly scheduled Monday morning meetings in the weeks prior to the election. At some of these meetings, according to Earl, "…employees spoke up and said the union had promised them it would be 'illegal' to get lower benefits if they were to vote in the union." Earl also contends that "[T]his statement was repeated at the final meeting before the election." Finally, Earl alleges that the Petitioner held a meeting for the employees on the Wednesday evening right before the election, thus making it impossible for the Employer to rebut any of the statements made by the Petitioner during that meeting.

The Employer submitted no evidence in support of Objection No. 1. Therefore, I shall recommend that Objection No. 1 be overruled.

The evidence submitted to support Objection No. 2 is hearsay. Earl's affidavit does not identify any employee who allegedly informed him regarding the Petitioner claim, he offers no support for the allegation that the statement was repeated at the final meeting, and he is obviously unable to relate anything that was said by the Petitioner at its final meeting, allegedly held on Wednesday, July 13, 2005. In addition to the lack of

[1] The petition was filed on June 10, 2005. I have considered only conduct occurring during the critical period, which begins on, and includes, the date of the filing of the Petition and extends through the election. The Ideal Electric and manufacturing Company, 134 NLRB 1275 (1961).

probative evidence submitted to prove these Objections, these objections allege that the Union somehow misrepresented a fact or provision of the law at a time when the Employer could not effectively reply to the alleged misrepresentation.

In **Midland Life Insurance Company, 263 NLRB 127 (1982),** the Board returned to the standard established in **Shopping Kart Food Markets, Inc., 228 NLRB 1311 (1997),** with regard to the allegedly objectionable nature of misrepresentations made in the course of representation election campaigns. In **Midland Life**, the Board maintained that it would no longer probe the truth or falsity of campaign statements, and elections would no longer be set aside on the basis of misrepresentation.

In determining that the statements allegedly made by the Petitioner as related in Earl's hearsay testimony do not warrant setting aside this election, I have also considered the decisions of the United States Court of Appeals for the Sixth Circuit in **NLRB v. Hub Plastics, Inc., 52 F.3d 608, 149 LRRM 2203 (6th Cir. 1995); Dayton Hudson Department Store Co. v. NLRB, 987 F.2d 359, 142 LRRM 2647 (6th Cir. 1993); and Van Dorn Plastics Machinery Co. v. NLRB, 736 F.2d 343, 116 LRRM 267 (6th Cir. 1984),** since this case arises within the Court's jurisdiction. Even under the court's more stringent standard these statements, even if made, do not constitute objectionable conduct

Accordingly, I shall recommend that Objection No. 2 be overruled.

Objection No. 7:

In Objection No. 7, the Employer alleges that the Board Agent conducting the election asked a voter who was challenged by the Petitioner: "Do you still want to vote?" The Employer alleges that this question was "impermissible conduct" by the Board Agent because the "…question made it appear to [the voter] that his vote was neither wanted nor necessary." The Employer goes on to claim, in its position statement, that "…the Board Agent made it appear that the Union's challenge might influence [the voter] to abandon his franchise. Such conduct presents an inference that the Board is weak in policing its own rules, and should require a new election."

Assuming arguendo that the Board Agent made the statement as alleged[2], there is no evidence to establish that it somehow interfered with the election results. As an initial matter, I note that all 14 voters on the election eligibility list voted in the election. Thus, there is no claim that any employee was prevented from voting. Secondly, while the phrase "do you still want to vote?" may be inartful, it does not rise to the level of "impermissible conduct" as alleged by the Employer. The Employer has offered no evidence that this one innocuous comment by the Board Agent was of sufficient gravity to void the election results.

[2] I note that evidence offered by the petitioner indicates a completely different version of these events.

To support its contention that this one remark should result in a new election, the Employer cites **Gory Associated Industries, Inc., 275 NLRB 1303 (1985)** and **Alco Iron & Metal Co., 269 NLRB 590 (1984)**.

In **Gory**, the Board ordered a new election because a Haitian Creole interpreter, which both parties agreed was required to conduct a fair election, arrived halfway through the election period. The Board reasoned that the evidence regarding the late arrival of the interpreter was "…prima facie proof of an objectionable failure to assure the effective and informed expression by all employees of their voting desires." In **Alco**, the Board Agent turned over the conduct of the election to the petitioner's Spanish-speaking observer, which, the Board found, created the impression that the petitioner and not the Board was responsible for running the election. Nothing in these cited cases remotely resembles the situation presented by the Employer's objection.

Thus, I shall recommend that the Employer's Objection No. 7 be overruled.

Objection No. 8

Objection No. 8 is of the nature of a "catch-all" objection. The Employer has offered no evidence to support this objection, and I shall recommend that it be overruled.

CONCLUSIONS AND RECOMMENDATIONS

I conclude that the Employer's Objection Nos. 1, 2, 7, and 8 are without merit. Therefore, I recommend that they be overruled[3].

Dated at Cleveland, Ohio this 19th day of August, 2005.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

Attachment

[3] Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the ***National Labor Relations Board***, addressed to the ***Executive Secretary, 1099--14th Street, N.W., Washington, D.C. 20570***. Exceptions must be received by the Board in Washington by ***September 2, 2000***.